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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,808	11/14/2000	Margaret M. Ward	KCX-117 (14096)	9551

7590

05/27/2004

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EXAMINER

HALPERN, MARK

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,808

Applicant(s)

WARD ET AL.

Examiner

Mark Halpern

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-16 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5-7,9,11,14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,8,10,13 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Art Unit: 1731

DETAILED ACTION

- 1) Acknowledgement is made of Appeal Brief received 3/17/2004.
- 2) Final Rejection issued in Office Action of 7/14/2003, is withdrawn in view of the Appeal brief and further search of art in prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 3) Claims 1, 4, 8, 13, are rejected under 35 U.S.C. 102(b) as being anticipated by Barnholz (5,906,711).

Claims 1, 13: Barnholz discloses a three ply tissue made of paper fiber furnish. The tissue is made up of three absorbent webs, joined together by embossing (col. 10, lines 33-62). As shown in Figure 2B, the outer plies are plies 42A and 42B, and the inner ply, located between the outer plies, is ply 41B. The inner ply 41B is of caliper of at least 20 mils, and basis weight of about 13.6 pounds/3000 square feet. This calculates inner ply bulk of 22.95 cc/g. The outer plies 42A or 42B are of caliper between about 4 and about 6 mils, and basis weight of 12.5 pounds/3000 square feet. This calculates outer ply bulk of 7.49 cc/g (col. 4, lines 9-49, col. 9, lines 36-66, and Figure 2B). A wet strength additive, has been added to the furnish from which the web

Art Unit: 1731

was formed (col. 6, lines 15-19). The tissue webs are absorbent, thus they are permeable.

Claim 4: at least one web is through dried in a through air drying equipment (col. 6, lines 55-65).

Claim 8: at least one outer web is creped (col. 7, lines 1-14).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 4) Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnholz in view of Salman (5,904,812). Barnholz is applied as above for claim 1, Barnholz fails to disclose the tissue being calendered, even though Barnholz discloses web 42B and 42A being smooth, untextured, conventional tissue (col. 9, lines 20-56). Salman discloses a tissue being calendered (Abstract). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Barnholz and Salman, because such a combination would improve smoothness and gloss in the product of Barnholz, a consumers desired quality in a tissue, as disclosed by Salman (Salman, col. 1, lines 5-53).
- 5) Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnholz in view of Mahl (4,355,021). Barnholz discloses a method of manufacturing a

Art Unit: 1731

three ply tissue made of paper fiber furnish. The tissue is made up of three absorbent webs, joined together by embossing (col. 6, line 20 to col. 7, line 62, col. 10, lines 33-62, and Figures 3, 6-8). As shown in Figure 2B, the outer plies are plies 42A and 42B, and the inner ply, located between the outer plies, is ply 41B. The inner ply 41B is of caliper of at least 20 mils, and basis weight of about 13.6 pounds/3000 square feet. The outer plies 42A or 42B are of caliper between about 4 and about 6 mils, and basis weight of 12.5 pounds/3000 square feet (col. 4, lines 9-49, col. 9, lines 36-66, and Figure 2B). The tissue webs are absorbent, thus they are permeable. Barnholz fails to disclose administering to the middle ply a chemical agent selected from the following agents: activated carbon, antibacterial agents, and foam. Mahl discloses a virucidal agent added to a paper tissue, said virucidal agent is impregnated within the tissue (Mahl, col. 1, lines 5-10, and col. 2, line 45 to col. 3, line 17). It would have been obvious, to one skilled in the art at the time the invention was made, to combine the teachings of Barnholz and Mahl, by adding the virucidal agent of Mahl into the middle ply product of Barnholz, because such a combination would provide for an improved product of Barnholz, since its use would reduce respiratory viral infections as disclosed by Mahl (Mahl, col. 3, lines 1-22).

Response to Amendment

6) Claims 1, 4, 8, 13, rejection under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Merker (6,277,241), is withdrawn in view of further search of art in prior art.

Art Unit: 1731

7) Claim 10 rejection under 35 U.S.C. 103(a) as being unpatentable over Merker in view of Salman (5,904,812), is withdrawn in view of further search of art in prior art.

8) Claim 16 rejection under 35 U.S.C. 103(a) as being unpatentable over Merker in view of Mahl (4,355,021)), is withdrawn in view of further search of art in prior art.

Conclusion

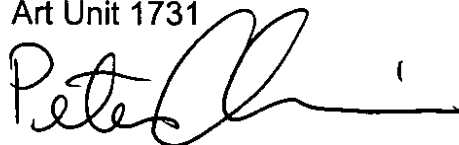
9) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 571-272-1190. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MH

Mark Halpern
Patent Examiner
Art Unit 1731



PETER CHIN
PRIMARY EXAMINER